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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,690	11/16/1999	FRANK HAGEBARTH	Q056494	3299

7590 08/06/2003

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EXAMINER
FERNSTROM, KURT

ART UNIT	PAPER NUMBER
3712	20

DATE MAILED: 08/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/440,690	FRANK HAGEBARTH	
	Examiner	Art Unit	
	Kurt Fernstrom	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 May 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,11-20 and 22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *15-20* is/are allowed.

6)☒ Claim(s) *1-9,11-14 and 22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-9, 11-14 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Shimizu, and further in view of Pearse. The claims are directed towards a method and apparatus for creating and monitoring a progress plan for a training course. Peterson discloses in column 3, line 10 to column 16, line 64 of the specification an apparatus and method of training a student comprising a computer network which creates a schedule for the user to perform the training and monitors the progress. In particular, column 12, lines 8-38 describe the use of schedule reports, which monitor the time and duration of training sessions by the user and compare the schedule with a prescribed schedule to ensure that the user is maintaining the prescribed schedule. The user is notified if he or she is not maintaining the prescribed schedule. Peterson further discloses in column 3, lines 35-36 that the computer network may comprise the Internet, and in column 15, lines 22-67 that the computer network may comprise an Intranet. Peterson fails to disclose that the method comprises defining first time units defining the time periods a trainee would like to spend on a course. Shimizu discloses in column 4, lines 2-47 of the

specification a method of creating a progress plan for a training program whereby the trainee can specify convenient dates and times to attend lectures, receive a list of available lectures in response, and select a preferred schedule from the list. It would have been obvious to one of ordinary skill in the relevant art to modify the method and apparatus disclosed by Peterson by providing means for defining time units representing time periods which the student would like to spend training for the purpose of allowing the student to select a preferred training schedule. Peterson and Shimzu fail to disclose the automatic creation and monitoring of a progress plan. Pearse discloses in column 3, line 5 to column 4, line 54 and in column 6, line 66 to column 7, line 45 a method of creating a progress plan for a training course whereby a progress plan is created automatically by a computer based on various external factors including time constraints. Column 3, line 51 to column 4, line 5 in particular describes the automatic scheduling process. It would have been obvious to on of ordinary skill in the relevant art to modify the method disclosed by Peterson as viewed in combination with Shimzu by providing for automatic scheduling for the purpose of making the scheduling process easier to manage, particularly for larger groups of trainees. With respect to claims 2-4 and 7, the various functions of Pearse disclosed in column 7, lines 7-40 suggest each of the various claimed features of claims 2-4 and 7. In particular, monitoring of students' progress is suggested in item (h), and sending the schedule to a user is suggested in item (I), lines 31-32. Also, Peterson discloses the monitoring of students' progress; viewed in combination with the automated system of Pearse, automated monitoring is also suggested. With respect to claims 5 and 6, Pearse discloses in various places the automatic

rescheduling or termination of a course, as for example in column 11, lines 20-23. In light of Pearse it would have been obvious to automatically terminate a course for any number of reasons, including a failure to complete the course, and automatic notification of such termination would be inherent in a system such as that disclosed by Pearse. With respect to claims 8, 9 and 11-13, Pearse discloses throughout the specification that the schedule is available over a network. E-mail is a well known and inherent part of a computer network. Also, while Peterson, Shimzu and Pearse fail to explicity disclose that the program is stored on a CD or floppy disk, these are extremely well known means of storing programs and would have been obvious for the purpose of allowing the user to install the program on a computer.

Allowable Subject Matter

3. Claims 15-20 are allowed.

4. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose or suggest a system having all of the limitations of claim 15, including a means for creating a progress plan for the execution of the training course dependent upon the fistand second time units, and a means for monitoring the completion of the training unit as defined by applicant. Under 35 USC 112, para. 6, "means...for language" is to be interpreted by looking at the specification to determine what, specifically, the invention is. If the prior art fails to disclose or suggests an apparatus that performs the same function in substantially the same way as the claimed invention, the claim is allowable. In this instance, while claims 1 and 14 recite broad

terminology which is read on by the prior art as discussed above, claim 15 requires analysis under 35 USC 112, para. 6. The details of the invention are discussed at pages 4-6 of the specification. None of the prior art discloses or suggests an apparatus that performs the same function as the claimed invention. As a result, claim 15, and all claims dependent therefrom, are allowed.

Response to Arguments

5. Applicant's arguments filed on May 20, 2003 have been fully considered but they are not persuasive. With respect to applicant's arguments that the prior art does not disclose first time units, Shimzu discloses this feature. Specifically, column 4, lines 17-22 that a trainee may specify dates and times, at which point a list of teachers which teach at that time is provided, from which the trainee can select a suitable lecture. While various teachers have already offered lectures at these times, the trainess is not merely selecting from a list. Rather, the student is inputting dates and times, thereby specifying training periods which he would like to spend on a course and thus defining first time units as defned in claims 1 and 14, and generating a list from which to select an appropriate lecture. These time units differ from second time units which represent the time required to spend on a course, in that the trainee himself is specifying certain dates and times, while both Peterson and Shimzu disclose predetermined time periods which are not initially selected by the trainee. While the first and second time units of Shimzu eventually become coextensive in that the trainee takes the course at the same time it is offered, this is necessarily true of any teaching process. The teachng and the taking of the course must occur at the same

time, and it would be nonsensical to assert that a trainee can take a couse at a time other than when it is available. Shimzu does not disclose the automatic scheduling of a progress plan based on the first time units; however, this feature is obvious over the teachings of the cited prior art as a whole.

In response to applicant's argument that the limitation of first time units has been interpreted too broadly, it is noted that the claim terminology itself is quite broad. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, the student, by inputting dates and times as keywords, has selected first time unitswhich represent time periods which applicant would like to spend on a training course.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303.

KF

Kurt Fernstrom

August 5, 2003